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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n)	)	
and 332 of the Communications Act	)	GEN. Docket 93-252
	)	
Regulatory Treatment of Mobile	)	
Services	)	

Reply Comments of General Communication, Inc.

General Communication, Inc. (GCI) hereby files reply comments in response to the Notice of Proposed Rulemaking[1] to implement Sections 3(n) and 332 of the Communications Act. Specifically, the Notice requested comment on the regulatory treatment of mobile services.

Most parties, including GCI, support the broad definition of commercial mobile services as outlined in the Notice. A mobile service is classified as commercial if the service is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. This definition is intended to encompass a large class of providers and should be so construed. The ability of the Commission to forbear from regulating commercial mobile service providers makes the private mobile service classification practically unnecessary. The Commission should not allow providers to manipulate the rules to their

[1]Notice of Proposed Rulemaking, Gen. Docket 93-252, FCC 93-454 (released October 8, 1993).

advantage by choosing to be a private mobile carrier when they indeed are offering commercial mobile services.

As supported by most parities, the definition of private mobile services should be extremely limited. A company should not be allowed to allocate a portion of its spectrum as commercial and a portion of its spectrum as private. This would enable providers to bend the Commission's rules for their own benefit. Many providers would have the incentive to designate allocations as private because the rules and filing fees are less burdensome. Furthermore, providers should not be allowed to negotiate individualized prices and call their services private. If the Commission allows providers to self certify that they are providing private mobile services and the Commission later determines that the provider should have certified that it was providing commercial mobile services, the provider should forfeit its license.

The Commission recently adopted rules for Personal Communications Services (PCS)[2] allowing Local Exchange Carriers (LECs) to provide PCS within their franchised areas without creating a separate subsidiary. The LEC bottleneck will continue and be even more entrenched when the LEC obtains a PCS license. Therefore, all commercial mobile service providers, including cellular and PCS providers, should be subject to equal access requirements. These rules should be based on the existing LEC rules. Through equal access, the customer will receive all the benefits promised by the wireless technologies,

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[2]Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen Docket 90-314, FCC 93-451 (released october 22, 1993).

including PCS. Furthermore, mobile service providers should be required to give their customers a choice of long distance service providers. This will ensure that interexchange competition is not harmed. The Commission well understands that the market performs best when the customer is able to choose its long distance carrier.

As outlined in the Notice, commercial mobile service providers are classified as common carriers, which can be exempt from provisions of Title II of the Communications Act other than Sections 201, 202 and 208. However, dominant carriers and their affiliates should not be exempt from any of the Title II requirements because of the market power they posses[3]. Also, rate base regulated LECs should not be allowed to include the costs of mobile services in their regulated costs. These dominant carriers are able to act anticompetitively, due to among other things, their control of the bottleneck. As supported by most parties, nondominant carriers do not have market power and should be exempt from Title II regulations.

All providers, whether dominant or nondominant, should be required to comply with all provisions relating to the complaint process. Those sections include 206 (Liability of Carriers for Damages), 207 (Recovery of Damages) and

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[3]See, Competitive Carrier Proceeding, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982); Second Further Notice of Proposed Rulemaking, FCC 82-187, released April 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo No. 3347, released June 14, 1983; Third Report and Order, Mimeo No. 012, released October 6, 1983; Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), rev'd, MCI v. FCC, 765 F.2d 1186 (D.C. Dir. 1985).

209 (Orders for Payment of Money). It is clear that Congress intended for all providers to comply with these Sections since they relate to the complaint process.

All commercial mobile service providers should be required to interconnect with each other on the same terms and conditions as all other commercial service providers. The Commission cannot let the LECs abuse this requirement by setting a single interconnection arrangement. Interconnection requirements should be based on what the interconnector requests, whether or not the interconnector is also a competitor. This will prevent discriminatory practices.

To ensure equality, the Commission should classify PCS providers as co-carrier's so that they receive all the benefits and obligations of such classification. The Commission has stated that PCS should be competitive with the LEC landline systems.[4] For that vision to become true, PCS providers must be co-carrier's. In this instance, the Commission must further define a co-carrier so as to include exchange access reciprocity. Mobile service providers are entitled to be compensated for terminating traffic from the LECs. Currently, the cellular operators are not compensated for termination of calls from the LECs. This is highly discriminatory. The LEC receives compensation for calls that originate on the cellular system and terminate over their landline networks, but cellular carriers are not compensated for calls that originate on the LEC system

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[4]Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-314, FCC 93-451 (released October 22, 1993).

and terminate on the cellular system. The Commission should change this discriminatory system and define a co-carrier to include exchange access reciprocity.

Conclusion

The Commission should broadly define commercial mobile services and narrowly define private mobile services to prevent abuse of its rules. Nondominant mobile service providers should be exempt from various Title II regulations since they do not posses market power. However, dominant providers and their affiliates should continue to be subject to these Title II regulations since they posses market power. PCS providers should be deemed co-carriers with all the benefits and obligations thereto. Interconnection should be on no less favorable terms than for other carriers or customers.

Respectfully submitted,

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November 23, 1993

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed November 23, 1993.

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CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 23rd day of November, 1993, a copy of the foregoing Reply Comments of General Communication, Inc. was mailed by first class mail, postage prepaid to the parties listed below.

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